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PERALTA COMMUNITY COLLEGE DISTRICT

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19 Attorneys for plaintiff  
JANICE PAYNE

20  
21 UNITED STATES DISTRICT COURT  
22 NORTHERN DISTRICT OF CALIFORNIA

23 JANICE PAYNE,

24 Plaintiff,

25 vs.

26 PERALTA COMMUNITY COLLEGE  
27 DISTRICT; DOES 1 through 10, inclusive,

28 Defendants.

**Case No.: C08-03133 RS (JL)**

**SETTLEMENT AGREEMENT AND  
ORDER**

**ORIGINAL  
FILED**

**AUG 31 2010**

**RICHARD W. WIEKING  
CLERK U.S. DISTRICT COURT,  
NORTHERN DISTRICT OF CALIFORNIA**

**E-filing**

PLAINTIFF JANICE PAYNE filed this action to enforce provisions of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 et seq., and California civil rights laws against Defendant, PERALTA COMMUNITY COLLEGE DISTRICT ("Defendant" or "District"). Plaintiff claims that the District violated Title II of the ADA, Section 504 of the Rehabilitation Act, sections 51, 52, 54 and 54.1 <sup>et</sup> ~~of~~ of the California Civil Code, and sections 4450 and 11135 of California Government Code by allegedly failing to provide full and equal access to the Peralta Community College District facility known as Laney College located in Oakland, California, and related facilities, including accessible parking, accessible paths of travel, accessible entrances onto the Laney College Campus, accessible restroom and classroom facilities, appropriate signage serving the Laney College campus during the time that Plaintiff attended Laney College.

The District answered Plaintiff's Complaint, denying all of Plaintiff's allegations. By entering into this Settlement Agreement and Order the District does not admit liability for the matters alleged in Plaintiff's Complaint filed in this action. The parties hereby enter into this Settlement Agreement and Order for the purpose of resolving the injunctive relief and damage claims in this lawsuit without the need for protracted litigation, and without the admission of any liability.

#### **I. JURISDICTION:**

1. The parties agree that the Court has jurisdiction over this matter pursuant to 28 USC §1331 for the alleged violations of Title II of the Americans with Disabilities Act of 1990, 42 USC 12101 *et seq.* and § 504 of the Rehabilitation Act of 1973 and pursuant to 28 USC §1367 supplemental jurisdiction for the alleged violations of California Code of Regulations, Title 24-2; and California Civil Code §§51, 52, 54; 54.1; and 54.3.

2. In order to avoid the costs, expense, and uncertainty of protracted litigation over the issue of Plaintiff's claims for injunctive relief. Plaintiff and the District hereby agree to enter into this Settlement and Order to resolve all allegations raised in the Complaint concerning

*et*

1 claims for injunctive relief. Plaintiff's claims for damages, and attorneys' fees, litigation  
 2 expenses and costs will be subject to separate negotiations.

3 WHEREFORE, the parties hereby agree and stipulate to the Court's entry of this  
 4 Settlement Agreement and Order, which provides as follows:

5 **II. INJUNCTIVE RELIEF:**

6 **1. Scope of Corrective Work:**

7 The District agrees that it will perform the modifications set forth in the construction  
 8 plans attached hereto as Exhibit A (Barrier Removal Implementation Plan) and the list of other  
 9 corrections and policies as set forth in Exhibit B. In addition, the District has undertaken  
 10 numerous other construction projects that impact disabled access in and around the Laney  
 11 College Campus listed in Exhibit C. The District maintains that the projects listed in Exhibit C  
 12 were planned as part of the overall Master Plan to improve the Laney College campus and as  
 13 such were not planned in response to or as a result of the Payne litigation and further disputes  
 14 that the projects listed in Exhibit C trigger plaintiff's counsel right to claim attorneys fees and  
 15 litigation costs. The plaintiff disputes this position. However, in order to resolve plaintiff's  
 16 claims for injunctive relief, the District has agreed to incorporate the projects listed in Exhibit C  
 17 into this agreement. These projects are listed in Exhibit C along with the substantial completion  
 18 dates or in those cases where the projects are not completed, the anticipated substantial  
 19 completion dates.  
 20

21 **2. Timing of Corrective Work:**

22 The completion of the modifications set forth in the construction plans attached hereto as  
 23 Exhibit A will be completed as follows:

- 24 • The Barrier Removal Implementation Plan: The District anticipates March 25  
 25 2011 as the Substantial Completion date of the Barrier Removal Implementation  
 26 Plan. Defense counsel for the District will provide plaintiff's counsel with notice  
 27 of Substantial Completion. Following Substantial Completion of the Barrier  
 28 Removal Implementation Plan, the District anticipates a period of time necessary

1 to address "punch lists" and change orders. Defendant's counsel for the District  
 2 will notify plaintiff's counsel of the scope and timing of the completion of this  
 3 phase of the project. Defendant's counsel will provide plaintiff's counsel with a  
 4 copy of the Notice of Completion filed with the Division of State Architects and  
 5 the County of Alameda.

- 6 • Renovation of the Laney Interior Roadway Infrastructure: The District  
 7 anticipates substantial completion of the Laney College Interior Roadway  
 8 Infrastructure within four years of the execution of this agreement.  
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10 In the event that Defendant is unable to complete the corrective work as set forth in  
 11 Exhibits A, B, C and D pursuant to the dates indicated herein, notwithstanding a good faith effort  
 12 to complete the work, Defendant's counsel will notify Plaintiffs' counsel in writing within 14  
 13 business days of any delay and the cause for the delay. Plaintiff will not unreasonably withhold  
 14 consent for a reasonable extension of time to complete the modifications and barrier removal, but  
 15 maintains the right to seek a motion to enforce this Order, including the right to seek statutory  
 16 attorney fees, litigation expenses and costs in the event the modifications and corrective work are  
 17 not completed pursuant to the Schedule. (Resolution of disputes regarding the scope and timing  
 18 of corrective work are detailed below in Section IV.)

19 In return for the consideration provided for in this Agreement, the adequacy of which is  
 20 hereby acknowledged, on the Effective Date of the Agreement, JANICE PAYNE, will execute a  
 21 release from all injunctive relief claims arising out of PAYNE v PERALTA COMMUNITY  
 22 COLLEGE DISTRICT U.S.D.C. Case No. C08-03133 RS (JL).

#### 23 **IV. DISPUTE RESOLUTION**

24 1. The parties will negotiate in good faith to resolve any dispute relating to the  
 25 interpretation or implementation of this Agreement.

26 2. In the event plaintiff believes that defendant is not in compliance with the terms of this  
 27 Agreement, plaintiff will notify defendant in writing of the alleged noncompliance.  
 28



1 3. Defendant will have thirty (30) days, following receipt of the notification to respond  
2 to plaintiff in writing concerning the alleged violations or noncompliance.

3 4. Following plaintiff's receipt of defendant's response, if any, to any alleged violations  
4 or noncompliance, the Parties will negotiate in good faith for at least fifteen (15) days to resolve  
5 their differences.

6 5. Plaintiff agrees not to file any motion to enforce this Agreement until this dispute  
7 resolution process has been completed and then only if the alleged violations or noncompliance  
8 have not been corrected as a result of the dispute resolution effort by the Parties. Any motion to  
9 enforce this Agreement will be brought in the court in which this action is currently pending.

#### 10 **V. CONTINUING JURISDICTION**

##### 11 **1. Continuing Jurisdiction**

12 The parties shall agree to the jurisdiction of the Magistrate Judge to enforce this  
13 agreement.

14 The Court shall maintain jurisdiction over the lawsuit, including jurisdiction to enforce  
15 the terms of this Agreement and to otherwise oversee compliance with the terms of this  
16 Agreement and for such additional time as may be necessary to resolve any disputes still pending  
17 at the end of the Settlement. The Court's jurisdiction over the Injunctive Relief terminates upon  
18 completion of the corrective work described in Exhibits A, B, C and D.

#### 19 **IV. MISCELLANEOUS**

##### 20 **1. Entire Agreement**

21 This Agreement expresses and constitutes the complete and final understanding of the  
22 Parties with respect to the subject matter of this Agreement. The parties hereto understand and  
23 agree that the terms of this Agreement supersede any prior discussions, understandings, or  
24 agreements, whether orally or in writing, between them related to the subject matter hereof.

##### 25 **2. Counterparts**

26 This Agreement may be executed in counterparts, each of which shall be considered an  
27 original, but all of which, taken together, shall constitute one and the same instrument.

##### 28 **3. Interpretation**

The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any of the Parties. The headings in this Agreement are solely for convenience and shall not be considered in its interpretation. Where required by context, the plural includes the singular and the singular includes the plural, and the terms "and" and "or" shall mean "and/or." This Agreement is the product of negotiation and joint drafting so that any ambiguity shall not be construed against any party.

#### 4. Severability

In the event any portion of this Agreement is deemed to be unenforceable, or is in conflict with applicable law, the remainder of this Agreement will be enforced and will remain in full force and effect.

#### 5. Additional Documents

To the extent any documents are required to be executed by any of the Parties to effectuate this Agreement, each party hereto agrees to execute and deliver such and further documents as may be required to carry out the terms of this Agreement.

#### 6. Authority to Bind

Each signatory to this Agreement certifies that it, he or she is fully authorized by the party it, he or she represents to enter into the Agreement, to execute it on behalf of the party represented, and to legally bind that party thereto.

#### 7. Facsimile Signatures

The parties agree that signatures transmitted via facsimile shall be deemed original signatures.

Dated: 08/31, 2010

  
Plaintiff  
JANICE PAYNE

*el*

1 Dated: 8-31-, 2010

Sadiq B. Ikharo

2 DR. SADIQ B. IKHARO  
3 Peralta Community College District Vice Chancellor in  
4 charge of General Services on behalf of DEFENDANT  
5 PERALTA COMMUNITY COLLEGE DISTRICT

6 **APPROVED AS TO FORM:**

7  
8 **For Defendant:**

9 STUBBS & LEONE

10  
11 Dated: August 31, 2010

Claudia Leed  
12 Attorneys for Defendant  
13 CLAUDIA LEED

14 **For Plaintiff:**

15  
16 Dated: 8/31, 2010

17 PAUL L. REIN  
18 LAW OFFICES OF PAUL L. REIN

JULIE A. OSTIL  
19 LAW OFFICES OF JULIE A. OSTIL

Julie Ostil  
20 Attorneys for Plaintiff  
21 JANICE PAYNE

22  
23 **ORDER**

24 Pursuant to the Agreement of the Parties, and for good cause shown, IT IS SO

25 ORDERED.

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27 Dated: 8-31-10, 2010

James Larson  
28 Honorable JAMES LARSON  
United States District Magistrate Judge

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EXHIBIT A

A disc containing the Barrier Removal Implementation are attached hereto as Exhibit A





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## EXHIBIT B

The District agrees to do the following with respect to maintenance and other corrective measures:

1. Check and adjust as necessary door pressure on all exterior doors and interior doors with mechanical door closers on an annual basis to insure that the door pressures complies with applicable ADAAG and Title 24 regulations;

2. Direct custodial and maintenance staff and faculty to rearrange classroom furniture to insure that there is a 36 inch clear space to allow persons using wheelchairs the required path of travel within classrooms and maintain clear space in all accessible elements;

3. Acquire \$10,000 in accessible classroom furniture and place said furniture in Laney College classrooms in an as needed basis within one year of the execution of this agreement.

4. Fabricate and install handrails for Art Building walkway pending DSA approval within one year of the execution of this agreement;

5. Install a sign indicating "Watch for Pedestrians" in the Southwest Parking lot for cars parked facing East 8<sup>th</sup> Street;

6. Restripe accessible parking stalls adjacent to the tennis courts to comply with ADAAG and Title 24;

7. Raise the drain and/or repair paving around drain to correct excessive slope. This drain is located in interior roadway in the path of travel between the entrance to the swimming pool and the women's locker room;

8. Adopt a policy that when a wheelchair user is registered for a class to be held in classroom 189A, Building G, the class will be relocated to an accessible classroom. DSPS is to be notified and is responsible for managing the class relocation;

9. Make the corrections to the back stage of the theater per the attached plans by the completion of the BRIP. (See Exhibit D)

EXHIBIT C  
ADDITIONAL PROJECTS AT  
LANEY COLLEGE IMPACTING DISABLED ACCESS

Project	Project Number	Date of Completion/Anticipated Date of Completion
Signage Project (District wide)	2334	Phase I completed August 2, 2010
Restroom Project	2314	Completed July 8, 2008
Tower Project	2314	Anticipated completion April 11, 2011
Student Center	2944	Anticipated completion June 1, 2011
Beginner's Inn/Culinary Kitchen	2322	Completed May 1, 2009
DSPS	2314	Completed December 31, 2009
Athletic Complex	2338	Anticipated completion April 1, 2011
Financial Aide	2314	Completed December 31, 2009
Buildings F and G (lab spaces)	2314	Completed December 31, 2009
Laney Tunnel Lighting	2314	Completed March 31, 2009

EXHIBIT D

BACK STAGE THEATER CORRECTIONS

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